

WSR 24-02-094
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 3, 2024, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-160.

Title of Rule and Other Identifying Information: WAC 314-02-1071

What is "trade area"?

Hearing Location(s): On February 14, 2024, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also log in using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than February 28, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by February 7, 2024.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by February 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amended language is to clarify the language in WAC 314-02-1071 regarding exceptions to trade area requirements for spirits retailers in locations that are primarily accessed by boat, and to exempt businesses on tribal land and owned by tribal enterprises from the 20 mile travel distance requirement in WAC 314-02-1071(1). The proposed changes, as described below, define the terms "Tribe" and "tribal enterprise," as well as move around some of the language of existing WAC 314-02-1071 to enable better flow and readability of the rule language overall. It is anticipated to allow a small number of spirits retailers to open on tribal land that have historically not been able to open due to regulatory requirements.

Reasons Supporting Proposal: WAC 314-02-1071 has not been revised since it was originally promulgated in 2013. The board undertook the rule project to explore whether modernizing language was appropriate in the context of statewide demographic shifts and current socioeconomic factors. Extensive outreach to stakeholders and tribal partners has been conducted, first in July 2023, and again in November 2023. After circulating draft language in July 2023, the board received feedback from existing licensees and from several of the state's tribes and tribal partners on suggestions to the rule language. Revised draft language was developed between July and November 2023, and feedback was gathered during two tribal engagement sessions and a stakeholder engagement session in November. The proposed draft rule language was generally supported by the participants of the various

rule workshops, and that is, by and large, the language that is being filed with this proposal. Some proposed edits received from industry groups have not been incorporated into the proposed rule language as they were viewed to be beyond the intentionally narrow scope of this rule making.

Subsection	Current Rule Language	Proposed New Language	Rule Necessity
Title	What is "trade area"?	Trade area.	Improving clarity without changing effect.
(2)	The board will use the following criteria when determining to accept a spirits retail license application where the proposed premises location is less than ten thousand square feet of fully enclosed retail space: (a) There is no spirits retail license holder or auction title holder within twenty travel miles at the time of license application; and (b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is http://wslcb.maps.arcgis.com/home/ .	For a spirits retail license application where the proposed premises is less than 10,000 square feet of fully enclosed retail space, the board will determine if there is an existing spirits retailer within 20 travel miles at the time of license application.	Improving clarity without changing effect. Removing reference to outdated mapping technology. This is no longer necessary due to widespread availability of public mapping tools such as Google Maps, etc.
(3)	Former contract liquor stores and title holders by those who purchased a state store at auction are exempt from the ten thousand square foot minimum required by law. Should either choose to locate within an established trade area and they are in compliance with board relocation criteria, they may be issued a license.	Former contract or state liquor stores owners are exempt from the 10,000 square foot minimum required by law. If either entity chooses to locate within a trade area as defined in this section, they may be issued a license [license] as long as they are in compliance with relocation criteria established by the board.	Improving clarity without changing effect.
(4)	The board may make an exception to the twenty mile travel distance for the following: A spirits retail license application is for a location where the significant mode of travel is other than by automobile.	(5) The board may make an exception to the 20-mile travel distance requirement for a spirits retail license application where access to the proposed location is by means of travel other than automobile.	Improving clarity without changing effect. This has been renumbered as subsection (5) with the new language being new subsection (4) to ease the flow and readability of the rule.
N/A	N/A	(4) Stores owned and operated by a tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the Tribe or its members, are exempt from the 20-mile travel distance requirement. (a) For purposes of this subsection, "Tribe" means a federally recognized tribe as defined by 25 U.S.C. Sec. 4103 (13)(B). (b) For purposes of this subsection, "tribal enterprise" means a wholly owned business enterprise of the tribe.	Returning oversight of entities on tribal land to tribes.
All	(Changed written numbers to numeric form.)		Improving clarity without changing effect.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state liquor and cannabis board (LCB), governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, LCB considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 445310 for Beer, Wine, and Liquor Stores. This is defined by NAICS as follows: Establishments primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine and liquor. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/>.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a generously estimated two hours of administrative time at \$50 per hour, for a total of \$100. The agency assumes this activity would involve reviewing the revised rules and considering the implications when applying for a spirits retail license. Existing spirits retail licensees have no reason or need to review the revised rules, but if they decide to, they too will expend no more than \$100.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
445310	\$100	Beer, Wine, and Liquor Stores	Beer, Wine, and Liquor Stores	\$2,645.36	\$1,970.63 2021 Dataset pulled from ESD	\$2,645.36 2021 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for spirits retailers, classified by NAICS as beer, wine, and liquor stores. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

ESD - Washington state employment security department.

DOR - Washington state department of revenue.

January 3, 2024
David Postman
Chair

OTS-5059.3

AMENDATORY SECTION (Amending WSR 13-20-148, filed 10/2/13, effective 11/2/13)

WAC 314-02-1071 ((What is "trade area"?) Trade area. (1)

"Trade area" as used in RCW 66.24.630 means an area where there is no spirits retail license within a ((twenty)) 20-mile travel distance at the time of license application.

(2) ((The board will use the following criteria when determining to accept)) For a spirits retail license application where the proposed premises ((location)) is less than ((ten thousand)) 10,000 square feet of fully enclosed retail space((+)

(a) There is no spirits retail license holder or auction title holder)), the board will determine if there is an existing spirits retailer within ((twenty)) 20 travel miles at the time of license application((+ and

(b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is <http://wsleb.maps.aregis.com/home/>)).

(3) Former contract or state liquor store((s and title holders by those who purchased a state store at auction)) owners are exempt from the ((ten thousand)) 10,000 square foot minimum required by law. ((Should)) If either entity chooses to locate within ((an established)) a trade area ((and)) as defined in this section, they may be issued a license as long as they are in compliance with ((board)) relocation criteria((, they may be issued a license)) as established by the board.

(4) Spirits retailers owned and operated by a tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the tribe or its members, are exempt from the 20-mile travel distance requirement.

(a) For purposes of this subsection, "tribe" means a federally recognized tribe as defined by 25 U.S.C. Sec. 4103 (13)(B).

(b) For purposes of this subsection, "tribal enterprise" means a wholly owned business enterprise of the tribe.

(5) The board may make an exception to the ((twenty)) 20-mile travel distance requirement for ((the following+)) a spirits retail license application ((is for a location)) where ((the significant mode)) access to the proposed location is by means of travel ((is)) other than ((by)) automobile.